IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 24 of 2001

(Old No.1336/2000)

Date of decision: 1st August, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 1.8.2006.

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 24 of 2001
(Old FAFO No. 1336/2000)

Smt. Shaila Bhatt,
W/o Late Sri Jagdish Prasad Bhatt,
R/o Village and Post Gopeshwar,
Tehsil and District Chamoli. …… Appellant

Versus

1. Sri Vijaypal Singh S/o Sri Sain Singh
   Motor Owner of Bus NO. UP07/B-9254,
   R/o Near Police Lines, Gopeshwar,
   District Chamoli.
2. Sri Mahesh Singh Bhandari,
   S/o Sri Kedar Singh
   Driver of Bus No. UP07/B-9254,
   R/o Village Bandarkhand,
   P.S. and Tehsil Karanprayag,
   District Chamoli.
3. New India Assurance Co.,
   through Regional Manager,
   Haridwar. …….. Respondents

Mr. Rajendra Dobhal, Advocate for the appellant.
Mr. B.S. Negi, Advocate for respondent No. 1.
None for respondent No. 2.
Mr. T.A. Khan and Mr. Rajesh Joshi, Advocates for respondent No. 3.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimant's appeal under Section 173 of the Motor Vehicles Act, 1988 against the impugned Award dated 23.26.2000 passed by Motor Accident Claims Tribunal, Chamoli in Motor Accident Claim Case No. 22 of 1996, whereby the appellant's claim petition was dismissed on the ground that the claimant could not establish the identity of the offending vehicle.

2. Appellant Smt. Shaila Bhatt claimed compensation of Rs.4,00,000/- for the death of her husband Jagdish Prasad Bhatt in the motor accident on 20.10.1993, when he was dashed by the offending

vehicle bus bearing registration No. UP07/B-9254 resulting in serious injuries to him, which led to his death. The claimant, further, pleaded that deceased Jagdish Prasad Bhatt used to earn Rs. 3,000/- per month as a photographer.

3. The owner and insurer of the offending vehicle bus contested the claim. The owner denied his liability to pay any compensation to the claimant on the plea that his bus bearing registration No. UP07/B-9254 was not involved in the accident, whereas the insurer denied its liability to pay compensation on the plea that the bus was being plied in breach of the policy conditions and the driver of the bus was not holding a valid driving license.

4. The Tribunal, on the evidence led by the parties, though held that claimant's husband Jagdish Prasad Bhatt died on account of the injuries sustained by him in the accident on 20.10.1993, dismissed the claimant's claim petition on the ground that the claimant could not establish that the bus of respondent No. 1 Vijaypal Singh bearing registration No. UP07/B-9254 was involved in the accident.

5. Mr. Rajendra Dobhal, the learned counsel for the appellant vehemently argued that the Tribunal has erred in discarding the claimant's evidence and in dismissing the claim petition.

6. Mr. B.S. Negi, the learned counsel for respondent No. 1 (the owner of the offending vehicle) and Mr. T.A. Khan, the learned counsel fo respondent No. 3 (the Insurance Company), on the other hand, supported the Award and contended that, as the claimant's evidence could not establish the identity of the offending vehicle, the Tribunal was left with no other option but to dismiss the claim petition.

7. True, it is established from the claimant's evidence that Jagdish Prasad Bhatt sustained injuries in the motor accident on 20.10.1993 and died on account of those injuries.

8. The crucial question, which now crops up for our consideration, is whether the evidence led by the claimant before the Tribunal was sufficient to establish the involvement of bus bearing registration No. UP07/B-9254 in the said accident.

9. In support of her claim, the claimant examined herself as PW1 and another witness S.S. Kanderi, Advocate as PW2.

10. Admittedly, PW1 Smt. Shaila Bhatt (claimant) was not any eye-witness of the accident, wherein her husband Jagdish Prasad Bhatt sustained injuries leading to his death. Thus, her evidence is of no help on the question of identity of the offending vehicle.

11. The other witness examined by the claimant PW2 S.S. Kanderi, Advocate, though has stated in his examination-in-chief that Jagdish Prasad Bhatt was dashed by the bus bearing registration No. UP07/B-9254, but in his cross-examination, he has admitted that he did not disclose the registration number of the offending vehicle bus to the police, when it arrived at the place of the occurrence. This material omission on the part of this witness is sufficient to create doubt about his presence at the time of the accident.

12. Admittedly, the First Information Report, a carbon copy whereof was filed before the Tribunal, was lodged after about six months of the accident on 18.03.1994. There is no material available in the record to indicate that the registration number of the offending vehicle was disclosed by the claimant or any other witness either on the date of the accident or immediately thereafter. In the First Information Report, it was mentioned by the claimant that the number of the offending vehicle as UP07/B-9254 was conveyed to her by some unknown person, who claimed to have been travelling in the said bus at the time of the accident, through a letter, which was received by the brother of her husband. For the reasons best known to

the claimant, neither the said letter was produced in evidence nor the said person, who is said to have sent the letter, was examined before the Tribunal.

13. In this state of evidence, we do not find any infirmity in the findings recorded by the Tribunal holding that the claimant could not establish the identity of the offending vehicle as that of the bus of respondent No. 1 Vijaypal Singh bearing registration No. UP07/B-9254. In the absence of a positive finding in regard to the involvement of the bus bearing registration No. UP07/B-9254, the respondents, i.e. the owner, driver and insurer of the bus, cannot be held liable to pay compensation to the claimant. The appellant's claim petition, therefore, has been rightly dismissed by the Tribunal.

14. The appeal, therefore, fails and is hereby dismissed.

15. As we have affirmed the dismissal of the appellant's claim petition, no order on the cross-objections filed by respondent No. 3, the insurer of the offending vehicle, is necessary and the cross-objections also stand disposed of.

16. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
01.08.2006 01.08.2006

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